

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY HOLMES,

Petitioner,

Case No. 2:07-CV-11396

HON. AVERN COHN

v.

JAN E. TROMBLEY,

Respondent.

THIRD ORDER COMPELLING PRODUCTION OF STATE COURT RECORD

This is a habeas case under 28 U.S.C. § 2254. On April 3, 2007, a magistrate judge issued an order of responsive pleading requiring Respondent to file an answer in accordance with Rule 5 of the habeas corpus rules by October 5, 2007. After being given an extension of time, Respondent filed an answer to the petition on November 5, 2007. Respondent, however, failed to file the Rule 5 materials with the answer.

On January 23, 2008, the magistrate judge issued a second order compelling production of state court record, in which he ordered respondent to provide the Rule 5 materials within twenty one days of the order. On January 28, 2008, Respondent filed the records from the Michigan Court of Appeals and the Michigan Supreme Court with respect to Petitioner's direct appeals and his post-conviction motion, as well as the transcripts from the jury selection from Petitioner's trial. However, Respondent failed to provide the remaining transcripts from Petitioner's trial in the state court, despite being ordered to do so twice. These trial transcripts are necessary for resolving Petitioner's

claims.

The habeas corpus rules require respondents to attach the relevant portions of the transcripts of the state court proceedings, if available, and the court may also order, on its own motion, or upon the petitioner's request, that further portions of the transcripts be furnished. Rules Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254. Rule 5 speaks in mandatory terms as to what must be attached to the respondent's answer.

Accordingly, Respondent to produce the trial transcripts in this case from April 18, 2002, April 22, 2002, April 23, 2002, April 24, 2002, April 25, 2002, April 29, 2002, April 30, 2002, and May 1, 2002 within **twenty one (21) days** of the date of this order or show cause why they are unable to comply with the order. If Respondent fails to submit the relevant portions of the record as directed, any doubts as to the record will be resolved in the Petitioner's favor. See Horton v. Jones, 2006 WL 2161166, * 1 (E.D. Mich. July 31, 2006). No further extensions shall be permitted.

SO ORDERED.

Dated: January 6, 2009

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to Jeffrey Holmes 411941, Straits Correctional Facility, 4387 West M-80, Kincheloe, MI 49785 the attorneys of record on this date, January 6, 2009, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160